रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 6] नई दिल्ली, फरवरी 3—फरवरी 9, 2019, शनिवार/माघ 14—माघ 20, 1940
No. 6] NEW DELHI, FEBRUARY 3—FEBRUARY 9, 2019, SATURDAY/ MAGHA 14— MAGHA 20, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 30 जनवरी, 2019

का.आ. 215.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड.) के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, डॉ. अनूप वधावन, वाणिज्य सचिव के स्थान पर वाणिज्य विभाग में अपर सचिव श्री बिद्युत बिहारी स्वैन को तत्काल प्रभाव से, अगले आदेशों तक भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 9/16/2012-आईएफ-I]

सौम्यजित घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 30th January, 2019

S.O. 215.—In exercise of the powers conferred by Sub-Clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Sh. Bidyut Behari Swain, Additional Secretary, Department of Commerce as Director on the Board of Directors of Export Import Bank of India (EXIM Bank) vice Dr. Anup Wadhawan, Commerce Secretary with immediate effect until further orders.

[F. No. 9/16/2012-IF-I]

SOUMYAJIT GHOSH, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 22 जनवरी, 2019

का.आ. 216.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मेसर्स ईटालैब (गोवा) प्राइवेट लिमिटेड - हाउस न. 197, रेडी सुकल भट, पोस्ट रेडी, तालूका वैंगरुला, जिला सिंधू दुर्ग, महाराष्ट्र - 416517 को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग II, खंण्ड 3, उप खंण्ड (ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशितर अधिसूचना मे उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात, लौह अयस्क और बॉक्साइट को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन रेडी, किरनपानी, बैंकोट, साखरी, केलासी एवं जयगढ़ में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

(i) यह अभिकरण, खनिज और अयस्क समूह-। का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यो के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी।

[फा. सं. के-16014/07/2018-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 22nd January, 2019

S.O. 216.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises M/s. Italab (Goa) Private Limited – House No. 197, Redi Sukal Bhat, Post Redi, Taluka Vengurla, Jilla Sindhudurga, Maharashtra - 416517, as an agency for a period of three years with effect from the date of publication of this notification in the official Gazette, for the inspection of Minerals and Ores – Group-I, namely Iron Ore and Bauxite specified in the Schedule to the notification of the Government of India in the erstwhile Ministry of Commerce, published vide number S.O. 3975, dated the 20th December, 1965, in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20th December, 1965, prior to export of the said Minerals and Ores at Redi, Kiranpani, Bankot, Sakhri, Kelshi and Jaigarh, subject to the following conditions, namely: —

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection as specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965; and

(ii) the said agency, in the performance of its function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. K-16014/07/2018-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 1 फरवरी, 2019

का. आ. 217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 4/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल—22012/92/2015—आईआर (सीएम—II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 1st February, 2019

S.O. 217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2016*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/92/2015–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 18th day of December, 2018

INDUSTRIAL DISPUTE No. 4/2016

Between:

The President,
(Bandari Satyanarayana),
Telengana Trade Union Council,
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherial -504 209.
Adilabad District.(Telengana). … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Mandamarri -504231.
Adilabad District. …Respondent

Appearances:

For the Petitioner : M/s. Sangars Bhagawanth Rao & S.V. Rama Devi, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/92/2015-IR(CM-II) dated 23.12.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Co.Ltd., Mandamarri Area, Adilabad Distt. in terminating the services of Sri Badikala Narasaiah, Ex-Coal Filler, KK-1 inc., Mandamarri Area with effect from 13.8.1996 is justified or not? If not, to what relief the applicant is entitled for?"

On receipt of the reference it is numbered in this Tribunal as I.D. No. 4/2016 and notices were issued to the parties concerned.

2. The case stands posted for evidence of the Petitioner Union.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute the case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has got nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 18th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 44/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल–22012/100/2016–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 218.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/100/2016 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2018

INDUSTRIAL DISPUTE No. 44/2016

Between:

Sri Bandari Satyanarayana,
Sr.Vice President & Sreerampur Divn. President,
Rashtriya Collieries Mazdoor Sangh (RCM)(INTUC)
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherial -504 208.(Dist.)
Adilabad District.(Telengana). … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Divn., Sreerampur -504303.
Adilabad District. …Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. P.A.V.V.S. Sarma & Dasaradha Ramulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/100/2016-IR(CM-II) dated 3.11.2016 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Co.Ltd., SrirampurArea, Adilabad Distt. in terminating the services of Shri Nikadi Madhunaiah, Ex-CF, RK-7 incline, Srirampur Area with effect from 1.4.2007 is justified or not? If not, to what relief the applicant is entitled for?"

On receipt of the reference it is numbered in this Tribunal as I.D. No. 44/2016 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner Union.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute the case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has got nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 20th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 45/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल–22012/101/2016–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2016*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/101/2016 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2018

INDUSTRIAL DISPUTE No. 45/2016

Between:

Sri Bandari Satyanarayana,
Sr.Vice President & Sreerampur Divn. President,
Rashtriya Collieries Mazdoor Sangh (RCM) (INTUC)
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherial -504 209.
Adilabad District. (Telengana). … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Divn., Sreerampur -504303.
Adilabad District. …Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. P.A.V.V.S. Sarma & Dasaradha Ramulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/101/2016-IR(CM-II) dated 2/3.11.2016 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Co.Ltd., SrirampurArea, Adilabad Distt. in terminating the services of Sri Asampally Venkateshwarlu, Ex-BCF, RK-7 incline, Srirampur Area with effect from 14.8.2006 is justified or not? If not, to what relief the applicant is entitled for?"

On receipt of the reference it is numbered in this Tribunal as I.D. No. 45/2016 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner Union.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute the case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has got nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 20th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 46/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल—22012/102/2016—आईआर (सीएम—II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/102/2016–IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of December, 2018

INDUSTRIAL DISPUTE No. 46/2016

Between :

Sri Bandari Satyanarayana,
Sr.Vice President & Sreerampur Divn. President,
Rashtriya Collieries Mazdoor Sangh (RCM) (INTUC)
Rajkumar Complex, Saibaba Temple Road,
Jaffar Nagar, Mancherial -504 208. (Dist.)
Adilabad District. (Telengana). … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Sreerampur Divn., Sreerampur -504303.
Adilabad District. …Respondent

Appearances:

For the Petitioner : None

For the Respondent : M/s. P.A.V.V.S. Sarma & Dasaradha Ramulu, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 22012/102/2016-IR(CM-II) dated 3.11.2016 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the General Manager, M/s. Singareni Collieries Co.Ltd., SrirampurArea, Adilabad Distt. in terminating the services of Shri Iyla Rajaiah, Ex-CF, RK-7 incline, Srirampur Area with effect from 19.7.2004 is justified or not? If not, to what relief the applicant is entitled for?"

On receipt of the reference it is numbered in this Tribunal as I.D. No. 46/2016 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner Union.

3. Inspite of repeated calls, the Petitioner union did not turn up. Several opportunities have been given to the Petitioner Workman/Union to attend the court to prosecute the case. But the Petitioner workman/union failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman/union has already been settled and the Petitioner Union has got nothing to raise any claim against the Respondent. Hence, the case of the Petitioner workman/Union is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 20th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 131/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल–22012/83/2015–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2015*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/83/2015 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan , Presiding Officer

Dated the 19th day of December, 2018

INDUSTRIAL DISPUTE No. 131/2015

Between:

Sri M. Bhumaiah,
H.No.T2-544, Power House Colony,
Godavarikhani-505209.
Karimnagar Distt., Telengana …Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani –505209. … Respondent

Appearances:

For the Workman : Sri K. Vasudeva Reddy, Advocate

For the Respondent : Legal representative

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L-22012/83/2015-IR(C.II) dated 27.11.2015 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri M. Bhumaiah, Ex-Badli Filler, GDK-5 Inc., SCCL, Ramagundam-1 Area, Godavarikhani with effect from 12.4.2000 is justified or not? If not, to what relief the applicant is entitled for?''

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.131/2015 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The workman filed his claim statement with the averments in brief as follows:

The workman Sri M. Bhumaiah, worked as a Badli Filler at GDK-5 incline, M/s. Singareni Collieries Company Ltd., RG-I Area, Godavarikhani and was initially appointed as Badli Filler on 7.6.1994. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, he fell sick from 7.11.1997 onwards and could not be regular to his duties. While the matters stood thus, charge sheet dated 18.12.1998 was issued to him by the Respondent alleging that the Workman absented for duty during the year 1997, which amounts to misconduct under company's Standing Order No.25.25. Unfortunately, the workman could not submit any explanation to the charge sheet and also could not participate in the enquiry. Subsequently, one ex-parte inquiry was conducted and the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service w.e.f. 12.4.2000. It is stated that during the course of the enquiry the Workman has categorically stated about his inability to perform his duties regularly during the year 1997, was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 6 years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same

and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. **Respondent filed counter with the averments in brief as follows**:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 7.6.1994 as Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman did not attend the enquiry, which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the counsel for the Workman conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 27.12.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri M. Bhumaiah is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated into service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed on the workman. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 53 years, he is now aged about 56 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man and has already realised his mistake and is coming forward to work under the Respondent, atleast one chance should be given to him for reinstatement into service at the end of his service period. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about 6 years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent management for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri M. Bhumaiah is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri M. Bhumaiah is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread

earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri M. Bhumaiah, Ex-Badli Filler, GDK-5 Inc., SCCL, Ramagundam-1 Area, Godavarikhani with effect from 12.4.2000 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 180 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for his appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 19th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 132/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल—22012/84/2015—आईआर (सीएम—II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2015*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/84/2015 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 28th day of November, 2018

INDUSTRIAL DISPUTE No. 132/2015

Between :

Sri Ch. Paideshwar Rao,
S/o Komuraiah,
H.No.15-3-162, LB Nagar,
24th Division,
Godavarikhani-505209.
Karimnagar District. … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani –505209.
Karimnagar Distt. … Respondent

Appearances:

For the Workman : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L-22012/84/2015-IR(C.II) dated 27.11.2015 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri Chilumula Paideshwar Rao, Ex-Badli Filler, GDK-5A Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 17.2.1998 is justified or not? If not, to what relief the applicant is entitled for?''

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.132/2015 and issued notices to both the parties i.e., the workman and the management. Pursuant to the notice both the parties appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The workman filed his claim statement with the averments in brief as follows:

The workman Sri Chilumula Paideshwar Rao, Ex-Badli Filler at GDK-5A Incline, M/s. Singareni Collieries Company Ltd., RG-I Area, Godavarikhani was appointed as Badli Filler on 3.7.1995 . He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, during the year 1996, the workman suffered from ill-health and other family problems. While the matters stood thus, charge sheet dated 14.2.1997 was issued to him by the Respondent alleging that the Workman absented for duty during the year, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of enquiry, the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service w.e.f. 17.2.1998. It is stated that during the course of the enquiry the Workman has categorically stated about his inability to perform his duties regularly during the year 1996, which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered three years of continuous service in the Respondent's management. The Workman approached the Respondent to consider his

case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. Respondent filed counter with the averments in brief as follows:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 3.7.1995 as Badli Filler. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman had participated in the enquiry which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the counsel for the Workman conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 27.12.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Chilumula Paideshwar Rao is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No.I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But, the authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service and the punishment imposed on the workman need no interference.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. As per the submission of the Learned Counsel of the workman he has already realised his mistake and has taken shelter in the court at the age of 45 years, he is now aged about 48 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for his reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about three years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Chilumula Paideshwar Rao is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Chilumula Paideshwar Rao is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for his reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri Chilumula Paideshwar Rao, Ex-Badli Filler, GDK-5A Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 17.2.1998 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 28th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या एल सी 24/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल–22013/01/2019–आईआर (सीएम–II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. LC 24/2008*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22013/01/2019 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan , Presiding Officer

Dated the 28th day of December, 2018

INDUSTRIAL DISPUTE L.C.No. 24/2008

Between:

Sri Pullakola Shanker,
S/o Mallaiah,
C/o Smt. A. Sarojana,
Advocate, Flat No.G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad . …Petitioner

AND

1. The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Srirampur (Projects) Area, Srirampur, Adilabad District.

2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
SRP-3 & 3 A Inclines, Srirampur,
Adilabad District. …Respondents

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri M.V. Hanumantha Rao, Advocate

AWARD

Sri Pullakola Shanker who worked as Electrician (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. SRP(P)/P(IR)/35.A/98/996 dated 4.5.1998 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was initially appointed as Badli Filler on 1.3.1988 and later he was confirmed as Coal Filler. He was regular to his duties till the year 1995. But during the year 1996, the Petitioner suffered ill-health and other family problems and remained absent from duty for getting medical treatment. While the matters stood thus, charge sheet dated 17.3.1997 was issued to the Petitioner by the Respondents alleging that the Petitioner absented for duty during the year 1996, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. SRP(P)/P(IR)/35.A/98/996 dated 4.5.1998. It is stated that during the course of the enquiry the Petitioner has

categorically stated about his inability to perform his duties regularly during the year 1996, as it was only on account of his ill-health. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents' management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 10 years of continuous service in the Respondents' management till the date of his dismissal. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. SRP(P)/P(IR)/35.A/98/996 dated 4.5.1998 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 1.3.1988 as Badli Filler and regularized as Coal Filler with effect from 1.1.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the dates fixed for the enquiry and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondents were constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Counsel for the Petitioner conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondents is held as legal and valid vide order dated 5.8.2010.

5. Both the parties have advanced their arguments U/s.11A of the Industrial Disputes Act, 1947 in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Pullakola Shanker is legal and justified?

II. Whether the Petitioner is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness and other family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above facts but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness, and other family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing capital punishment. But the authority has not considered any of the submissions of the Petitioner, and has imposed capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty of the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to ill health and other family problems of the Petitioner, he could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 40 years, he is now aged about 50 years and is searching ways and means to provide bread and butter to his family members. In such a circumstances, atleast one chance should be given to him for his reinstatement into service in order to save his family members and to get all his terminal benefits. Admittedly several modes of punishment are enumerated in company's Standing Orders. But the management without considering the genuine grievance of the Petitioner decided to impose capital punishment. The Petitioner is a first offender and has worked for about ten years under the Respondents. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as the difficulties of

his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Pullakola Shanker is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Pullakola Shanker is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. therefore, the Petitioner is entitled to get reinstatement into service. Since the Petitioner has not filed this case soon after the dismissal of his service, he is not entitled to get any other relief except the relief of reinstatement into service.

Thus, Point Nos. II & III are answered accordingly.

ORDER

Proceeding No. SRP(P)/P(ir)/35.A/98/996 dated 4.5.1998 issued by the 1st Respondent is declared as illegal and is hereby set aside. It is ordered that the workman Sri Pullakola Shanker be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 28th day of December, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स सिंगारेनी कोलियरीज कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 133/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24.01.2019 को प्राप्त हुआ था।

[सं. एल—22012/85/2015—आईआर (सीएम—II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 1st February, 2019

S.O. 224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2015*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of M/s. Singareni Collieries Company Ltd., and their workmen, received by the Central Government on 24.01.2019.

[No. L-22012/85/2015 – IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan , Presiding Officer

Dated the 28th day of November, 2018

INDUSTRIAL DISPUTE No. 133/2015

Between:

Sri Lingampalli Lingaiah,
H.No.7/2/533/380, Ganga Nagar,
Godavarikhani-505209.
Karimnagar District. … Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area,
Godavarikhani –505209.
Karimnagar Distt. … Respondent

Appearances:

For the Workman : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Lakshmi Panguluri, Advocates

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No.L-22012/85/2015-IR(C.II) dated 27.11.2015 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri Lingampalli Lingaiah, Ex-Coal Filler, GDK-6B Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 13.8.2001 is justified or not? If not, to what relief the applicant is entitled for?''

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No.133/2015 and issued notices to both the parties i.e., the workman and the management. Pursuant to the notice of this Tribunal both the parties appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The workman filed his claim statement with the averments in brief as follows:

The workman Sri Lingampalli Lingaiah, Ex-Coal Filler at GDK-6B Incline, M/s. Singareni Collieries Company Ltd., RG-I Area, Godavarikhani was appointed as Badli Filler on 1.3.1988 and later he was confirmed as Coal Filler. He was regular to his duties and performing his duties upto the satisfaction of all his superiors. While so, during in the year 2000, the workman suffered from ill-health and other family problems. While the matters stood thus, charge sheet dated 15.1.2001 was issued to him by the Respondent alleging that the Workman absented for duty during the year, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of enquiry, the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved, and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service w.e.f. 13.8.2001 vide order No.P.RGI/32A/4848, dated 12.8.2001. It is stated that during the course of the enquiry the Workman has categorically stated about his inability to perform his duties regularly during the year 2000, which was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondent's management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered 13 years of continuous service in the Respondent's management.The Workman approached the Respondent to consider his case

sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal to declare the impugned order issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, and back wages etc..

3. Respondent filed counter with the averments in brief as follows:

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Workman was appointed in the Respondent's company on 1.3.1988 as Floating Badli Filler and subsequently appointed as coal filler w.e.f. 1.9.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman had participated in the enquiry which was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the counsel for the Workman conceding the legality and validity of the domestic enquiry conducted in the present case, the domestic enquiry conducted by the Respondent is held as legal and valid vide order dated 27.12.2017.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

6. In view of the above facts, the points for determination are:

I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Lingampalli Lingaiah is legal and justified?

II. Whether the Workman is entitled for reinstatement into service?

III. If not, to what other relief he is entitled?

7. **Point No. I**: During the course of argument, the Learned Counsel appearing on behalf of the Workman argued that due to his ill-health as well as other family problems, the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above fact, but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness and other family problems he could not be able to attend his duties regularly and remained absent. But, the authority should have considered his case while imposing capital punishment. The authority has not considered any of the submissions of the Workman, and has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent argued that when the Workman was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent's company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service and the punishment imposed on the workman need no interference.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and other family problems, the Workman could not be able to regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. As per the submission of the Learned Counsel of the applicant he has already realised his mistake and has taken shelter in the court at the age of 46 years, he is now aged about 49 years and is searching ways and means to provide bread and butter to his family members. When the Workman being an able bodied and energetic man has already realised his mistake and is coming forward to work under the Respondents, atleast one chance should be given to him for his reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. Though the Workman is a first offender and has worked for about three years under the Respondent, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family

members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Lingampalli Lingaiah is not legal and justified.

Thus, Point No. I is answered accordingly.

10. **Point Nos. II & III**: In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Lingampalli Lingaiah is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for his reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. Therefore, in the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

RESULT:

In the result, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarikhani, Karimnagar Distt. in terminating the services of Sri Lingampalli Lingaiah, Ex- Coal Filler, GDK-6B Inc., SCCL, Ramagundam-I Area, Godavarikhani with effect from 13.8.2001 is not justified and is hereby set aside. It is ordered that the workman be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman cannot claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman shall not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry and in the event of completion of one year of probation satisfactorily, the workman is to continue in service till the age of attaining superannuation. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 28th day of November, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Workman	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Workman

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 1 फरवरी, 2019

का.आ. 225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्वांचल बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 76/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01.02.2019 प्राप्त हुआ था।

[सं. एल—12012/111/2016—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 1st February, 2019

S.O. 225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2017) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur* as shown in the Annexure, in the industrial dispute between the management of Purvanchal Bank and their workmen, received by the Central Government on 01.02.2019.

[No. L-12012/111/2016– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE SHRI RAKESH KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, KANPUR

ID. No. 76/2017

Shri Durgesh Yadav,
Son of Sri RamNarain Yadav,
Harihar, Bhainsa,
PO Bansgaon,
Gorakhpur.

Vs

The Chairman,
Purvanchal Bank,
HO Mohaddipur,
Gorakhpur And others

AWARD

1. Central Government, MOL & Emp., New Delhi, vide notification No. L-12012/111/2016-IR(B-1) dated 24.10.2017, has referred the following dispute to this Tribunal for adjudication:

> "Whether the action of Purvanchal Bank, Branch Sirkriganj in terminating the services of Sri Durgesh Yadav w.e.f. 03.01.2016 without notice pay and retrenchment compensation is legal and justified? If not to what relief the concerned workman is entitled for?"

2. In instant case after receipt of reference order from the Ministry of Labor & Employment, New Delhi, registered notices dated 31.10.2017 and 13.12.2018 were issued to the claimant for filing his claim petition but the worker after being provided opportunities on 15.12.2017, 23.02.18, 07.03.2018, 23.03.2018, 11.05.2018, 25.07.2018, 28.09.2018 and last one is on 11.12.2012, he did not turn up on most of the dates fixed In the case neither the worker appeared in the court nor filed claim petition in support of his claim. It is also clear that the workman deliberately neither appeared in the case nor filed any claim petition for the reasons best known to him. Therefore under the facts and circumstances of the case the reference is to be adjudicated against the workman for want of pleading and proof.

3. However authority has been filed by the management but as no claim statement was filed by the worker the management also did not file written statement in the case.

4. The worker from his own conduct and behavior does not seems to be interested in prosecuting the present reference anymore and the tribunal under the facts and circumstances of the case the reference against the workman for want of pleading and proof.

5. Reference is accordingly answered against the worker and in favor of the management.

6. Award as above.

Date : 09.01.2019

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 5 फरवरी, 2019

का.आ. 226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 06/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.02.2019 प्राप्त हुआ था।

[सं. एल—12025/01/2019—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th February, 2019

S.O. 226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 05.02.2019.

[No. L-12025/01/2019– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No.6/2014

Shri Rajbir S/o Shri Richpal Singh,
R/o Village Sabhapur, Near Government School,
Post Office Gokulpuri,
Delhi – 110 094 …Workman

Versus

The General Manager,
State Bank of Patiala,
SMICC, 59, Community Centre,
Naraina Industrial Area,
New Delhi – 110 028 …Management

AWARD

Present dispute has been raised by ShriRajbir Singh (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. It has been averred in the statement of claim that the claimant was working as Peon with SMECC branch of the management since 28.06.2009 and his last drawn wages was Rs.6000.00. The claimant never gave a chance of complaint to the management and worked to the entire satisfaction of the management. The claimant was denied of his legal dues and he was paid wages in different names. The management was annoyed with the claimant when he objected to the same and threatened to terminate his services. The claimant worked continuously for three years, right from the time of opening of the branch till the end of the day.

A legal notice was sent to the management for paying him proper pay scale but to no avail. On 23.01.2013 the claimant lodged a complaint with the Conciliation Officer which annoyed the management and his services were done away with on 29.01.2013. Demand notice was served on the management on 14.05.2013 which was not responded by the management. It is averred by the claimant that he worked for more than 240 days in a calendar year. No notice or pay in lieu thereof, reinstatement compensation was given to the claimant. Shri Ravi, Shri Pravin, Shri Sanjay, Shri Satbir, Shri Vinod, who were juniors to the claimant are still working with the management. Termination of his services is violative of provisions of Section 25-F, 25-G and 25-H of Industrial Disputes Act, 1947. The claimant is unemployed

since the date of his termination on 29.01.2013. He claims reinstatement in service of the bank with continuity and full back wages.

3. Claim was demurred by the management averring that the claimant was ever employed as class IV with the management at SMECC Naraina and there was never a person with the name of Shri Rajbir Singh on their rolls, hence question of providing any facilities does not arise. It is denied that the claimant was working on a permanent post of peon for the last three years. Services of the claimant were being taken in the past as casual labour as and when reqired and accordingly daily wages were paid to him. The management has denied the other material averments contained in the statement of claim. Finally, it has been prayed that the claim may be dismissed.

4. Based on the pleadings of the parties, following issues were settled by my learned predecessor vide order dated 28.02.2014:

(i) Whether claimant rendered 240 days continuous service to the bank in the preceding 12 months from the date of alleged termination of service?

(ii) Whether claimant is entitled to relief of reinstatement in service?

5. The claimant, in order to prove his case against the management examined himself as WW1, whose affidavits are Ex.WW1/ AND EX.WW1/B and he also tendered in evidence documents Ex.WW1/1 to Ex.WW1/23. Management, in order to rebut the case of the claimant, examined Shri Manoj Kumar Mishra as MW1, whose affidavit is Ex.MW1/A and he also tendered in evidence documents Ex.MW1/1 and Ex.MW1/2.

6. I have heard Shri K.P. Rao, A/R for the claimant and Shri S.K.Tyagi, A/R for the management. My findings on the issues involved in the controversy are as follows:

Findings on issue No.(i), (ii) and (iii)

7. During the course of arguments, Learned A/R for the management strongly argued that the claimant herein does not fall within the definition of the workman. Learned AR of the Management took pains to the oral as well as documentary evidence on record so as to buttress his submissions.

8. Per contra AR appearing on behalf of the claimant refuted the contention of the Management.

9. After hearing the submissions of the parties counsel at length and careful scrutiny of the evidence on record, I am of the firm view that the claimant falls within the definition of "workman" as provided under Section 2(s) of the Act, for the reasons hereinafter mentioned. In order to find out whether the workman herein falls within the definition of workman as defined in section 2(s) of the Act. It would be expedient to have a glance on definition of the term 'workman', contained in section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

"2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) Who is employed in the police service or as an officer or other employee of a prison , or

(iii) Who is, employed mainly in a managerial or administrative capacity, or

(iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

10. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore,

date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

11. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

12. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

13. Applying the legal principle as discussed above, this Tribunal is to examine whether claimant was performing any supervisory or administrative type of job so as to exclude him from the definition of workman. In this regard it is appropriate to refer to the contents of his affidavit Ex.WW1/A which is in consonance with the statement of claim. While appearing as WW1, the claimant has admitted that his last pay drawn was Rs./13,000/- or above. He clarified that since his ID was found locked and his senior Mr. Manish Chaudhary had told him about this. He also clarified that he is not member of any union and his work was of administrative nature in the bank and that he was also taking part in the policy making meetings of the bank with other officials of the bank.

14. To my mind simply because the claimant was performing administrative nature of duties or was taking part in the policy making meetings of the bank with other officials of the bank, would not be legally sufficient to exclude him from the definition of the workman. It has been held in the case of ***Hussan Mithu Mhasvadkar Vs. Bombay Iron and Steel Iron Board (2001) 7 SCC 394*** that the designation of an official alone is not decisive regarding applicability of the definition of workman under the Act and one has to examine the nature and kind of his duty as well as power and functions of such official, so as to decide whether he is performing supervisory nature of work or whether he is mainly employed in managerial or administrative capacity or not. There is nothing in the evidence of the Management as to what was the supervisory nature of work/duty which the claimant was performing and in what kind of policy decision, the claimant has taken part. There is also nothing on record to show that the claimant had got any kind of disciplinary powers or any official was working under his control and supervision, so as to hold that he was exercising any supervisory authority over his subordinates. In this regard it is also appropriate to refer to the statement of MW 1 Ms. Penaaz Gupta, Manager (HR) of the Management Bank. There is nothing in the statement of this witness regarding supervisory nature of duty which the claimant was performing or what are/were the powers & functions which claimant was enjoying in managerial or administrative capacity.

15. I have carefully gone through the ratio of law in the case ***Tata Sons Ltd. Vs. S. Bandoyopadhyay 2004 (102) FLR 157 (Delhi)*** wherein it was held that Deputy Manager (Engineering) does not come within the definition of workman, as he was required to report to his superior though was performing work which also included creativity and imagination. . There are also observations in the above ruling that mere designation of an employee is not of any consequence for the purposes of determining whether he is a workman or not. What is of importance is the nature of his duties, particularly his primary duties or his basic duties and the dominant purpose of his employment.''

16. There is hardly any dispute with the above preposition of law but in the case in hand there is no evidence on record to suggest that claimant was performing any managerial function or administrative work in the course of his primary or basic duties. The Management was under obligation to lead cogent evidence in this respect so as to exclude the claimant from the definition of the workman .

17. Equally settled is the position under law. The Industrial Dispute Act being a social and beneficial legislation, its provisions should be construed liberally and harmoniously so as to advance the interests of the workman.

18. In view of the above discussion, it is held that the claimant herein falls within the definition of workman. This issue is decided accordingly.

19. Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to his alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that he was in the employment of the Management Bank and has completed more than 240 days in a calendar year.

20. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A

that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The claimant has been cross examined and in his cross examination also he has clearly stated that he was engaged on 06.11.2010. He has also clarified that no letter of appointment was issued to him, nor any interview was taken. He was also not issued any identity card by the Management Bank. He has specifically stated that his signatures used to be taken on a voucher when salary was paid to him by the Bank. There are instances when his salary was paid in different names. He further clarified that his services were orally terminated by the Bank on 21.04.2013 and no written order was given to him. When he approached again, Management refused to allow him to join. He has specifically denied the suggestion that he has not worked for 240 days in a calendar year

21. The Management has examined Shri Manoj Kumar Mishra, Branch Manager of the Bank as MW1. He has clearly stated in his affidavit Ex.MW1/A that claimant was never in the employment of the Management Bank and casual labour is called as and when necessity arises from the pool of past casual employees by calling them on phone. The casual labour are paid either daily or weekly for the service which was rendered by them and not monthly basis and as such, there was no relationship of employer & employee between the Management and the claimant. He also deposed that there is no question of issuance of letter of termination as the claimant was not employee of the Management Bank.

22. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. BhikubhaiMeghajibhaiGavda (2012) 1 SCC 47.*

23. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the Management in its written statement has clearly admitted the factum of employment of the casual labour on daily wage basis and more so, there is specific statement of the claimant that he was engaged by the Management Bank in the year 2010, though neither any letter of appointment was issued to her, nor any interview was taken. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act or in accordance with Standing Order applicable to the establishment concerned . Since in the case in hand, it stands clearly proved from the pleadings and evidence on record, especially the vouchers Ex.WW1/4 to Ex.WW1/61 (though in different names as stated by the claimant) it is apparent that the claimant was duly engaged by the Management Bank for doing intermittent nature of work and he was also paid wages for such period of work performed by her. As such, it clearly establishes relationship of employer-employee between the Management and claimant.

24. It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(s) of the Act.

25. As discussed above, in the case in hand engagement of the claimant as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management in its written statement and that the Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the claimant who appeared as WW1 cannot be brushed aside, more so for the reason that work of cleaning of the bank premises is of regular and perennial in nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant after his termination from the job.

26. Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and the claimant herein and that termination of the claimant was wrong and illegal. Both these issues are, therefore, decided accordingly in favour of the claimant and against the Management.

27. Now the vital question for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. Admittedly, the Management bank has not issued any notice to the claimant before ordering his termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. There is long line of decisions of Hon'b le Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law.

28. The contention of the Management that onus to prove that claimant has worked for 240 days or more in a calendar year was upon the claimant. Though on the face of it, it is quite attractive but on the basis of evidence on record particularly the admission made by the Management in its written statement regarding engagement of claimant for doing cleaning work and/or for performing intermittent nature of work, nullifies the very spirit of the contention and rather shifts the onus upon the Management to prove that claimant has not worked for 240 days in a calendar year. The Management was in possession of relevant documents such as abstract of attendance of daily wage workers, vouchers, salary slips etc. as the Management was paying wages to the claimant in cash but no such document was produced on record. Having failed to produce such like documents, same is really a crippling blow to the case of the Management.

Resultantly, it is held that action of the Management in terminating the service of the claimant is totally illegal and wrong.

29. During the course of arguments, management relied on the judgement in the case of Secretary State of Karnataka vs. Uma Devi 2006 (4) SCC1, MP Housing Board Vs. Manoj Srivastava 2006(III) AD(SC) 282, Ex. Engineer (State of Karnataka) Vs. SomSetty& Others (1997) 5 SCC 434, Himanshu Kumar Vidyarthi& others vs. State of Bihar (1997) 5 SCC 391, State of Himachal Pradesh Vs. Suresh Kumar Verma (AIR 1996 SC 1565), Ashwani Kumar Vs State of Bihar AIR 1996 SC 2833 and Madhyamik Siksha Parishad Vs. Anil Kumar Mishra & others AIR 1994 SC 1638. I have gone through the ratio of the law, in the above judgements. Uma Devi case (supra) is not attracted to the case as engagement of the claimant is not illegal as he was engaged as daily wager by the bank. The case of MP Housing Board case (supra), it was case where the claimant was a daily and he was seeking pay scale of a permanent employee. However, in the case on hand, the claimant is seeking reinstatement. The case of Suresh Kumar Verma case (supra) is of no help to the case of the management as the claimant in the said case was overage and could not be considered for reinstatement. I have also gone through the case of Madhyamik Siksha Parishad case (supra). In the said case, the claimants were engaged on adhoc posts for a specific purpose, i.e. issuance of certificates to be issued to the successful candidates for the examinations conducted by it. However, in the case on hand, the claimant was engaged as casual labour. Hence, none of the above judgements come to the rescue of the management.

30. Now the only question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. During the course of arguments, the claimant was present before this Tribunal and he has stated that he is not gainfully employed after her termination. There is pleading in the claim petition as well as evidence in this respect. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or adhoc work to make both ends meet, that would not itself amount to gainful employment. But at the same time this Tribunal cannot ignore the fact that there is no positive evidence on record to prove that the claimant was continuously serving the Management bank since after his engagement. Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.''

31. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.2 lakh (Rupees Two Lakh) appears to be just and reasonable and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. ''Award is passed accordingly''. Let copy of this Award be sent for publication as required under Section 17 of the Act.

Dated : January 24, 2019

A.C. DOGRA, Presiding Officer

नई दिल्ली, 5 फरवरी, 2019

का.आ. 227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 05/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.02.2019 प्राप्त हुआ था।

[सं. एल—12025/01/2019—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th February, 2019

S.O. 227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 05.02.2019.

[No. L-12025/01/2019– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 5/2014

Shri Dharamveer S/o Shri Suneri Lal,
R/o House No.187, Vikas Nagar, Near Meher Chand Gate,
Idgah Road, Loni, Ghaziabad,
Uttar Pradesh

C/o B-94, BGS Block, Tis Hazari Court,
Delhi 110 054 …Workman

Versus

The General Manager,
State Bank of Patiala,
Regional Office-I, Delhi, NNBCC Place,
Second Floor, PragatiVihar, Lodhi Road,
New Delhi – 110 003

The Chief Manager,
State Bank of Patiala,
(AGM-RACPC), 59, Community Centre,
Naraina Industrial Area, Phase I,
New Delhi – 110 028 …Management

AWARD

Present dispute has been raised by Shri Dharamveer (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of her service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. It has been averred in the statement of claim that the claimant was working as Peon with Naraina branch of the management continuously since July 2009. Besides the work of peon, management took the work of preparing of loans files, entering RC/Insurance details in the computer etc. The claimant never gave a chance of complaint to the management and worked to the entire satisfaction of the management. The claimant was denied of his legal dues, including appointment letter, identity card, regular pay scale, provident fund, medical reimbursement etc. The management was annoyed with the claimant when he started demanding the above facilities. The claimant was made to perform duties of peon, in addition preparing of loan files, enter insurance details in the computer etc. When the claimant made a demand for the above facilities, the management out of vengeance started obtaining his signatures on various forms and vouchers. He was threatened of throwing him out when he protested. Since the claimant was made to work on permanent posts, a request was made by him to make him permanent on the post of peon. This annoyed the management, who without giving any notice or pay in lieu thereof and retrenchment compensation, terminated his services on 12.05.2013. No notice or pay in lieu thereof or retrenchment compensation was paid to the claimant. Demand notice was also served on the management on 14.05.2013 but there was no response from them. The management refused to take him back on duties. Termination of his services is violative of provisions of Section 25-F, 25-G and 25-H of Industrial Disputes Act, 1947 and Rule 77 and 79 of the Industrial Disputes (Central) Rules. He served notice of demand on 14.05.2013 seeking reinstatement of his services, but to no avail. The claimant is unemployed from the date of his termination. He claims reinstatement in service of the bank with continuity and full back wages.

3. Statement of defence was filed by the management wherein it is denied that the claimant was ever employed as class IV with the management and it is also denied that the claimant was doing the job of permanent class IV employee. There is no such person in the name of Shri Dharamveer Singh on the rolls of the management, hence question of issuing appointment letter/ID Card/pay-scale etc. or other facilities does not arise.. It is also averred that the bank engages casual labour as and when need arose and he was paid labour charges. The management has denied the other material averments contained in the statement of claim. Finally, it has been prayed that the claim may be dismissed.

4. Based on the pleadings of the parties, following issues were settled by my learned predecessor vide order dated 05.02.2014:

(i) Whether claimant rendered 240 days continuous service to the bank in the preceding 12 months from the date of alleged termination of service?

(ii) Whether claimant is entitled to relief of reinstatement in service?

5. The claimant, in order to prove his case against the management examined himself as WW1 and tendered in evidence documents Ex.WW1/1 to Ex.WW1/8. Management, in order to rebut the case of the claimant, examined Shri Ram Kumar Kharkali as MW1, who tendered in evidence documents Ex.MW1/1 and Ex.MW1/2.

6. I have heard Shri K.P. Rao, A/R for the claimant and Shri S.K.Tyagi, A/R for the management. My findings on the issues involved in the controversy are as follows:

Findings on issue No.(i) and (ii)

7. During the course of arguments, Learned A/R for the management strongly argued that the claimant herein does not fall within the definition of the workman. Learned AR of the Management took pains to the oral as well as documentary evidence on record so as to buttress his submissions.

8. Per contra AR appearing on behalf of the claimant refuted the contention of the Management.

9. After hearing the submissions of the parties counsel at length and careful scrutiny of the evidence on record, I am of the firm view that the claimant falls within the definition of "workman" as provided under Section 2(s) of the Act, for the reasons hereinafter mentioned. In order to find out whether the workman herein falls within the definition of workman as defined in section 2(s) of the Act. It would be expedient to have a glance on definition of the term 'workman', contained in section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
>
> (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or
>
> (ii) Who is employed in the police service or as an officer or other employee of a prison , or
>
> (iii) Who is, employed mainly in a managerial or administrative capacity, or
>
> (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

10. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

11. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

12. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

13. Applying the legal principle as discussed above, this Tribunal is to examine whether claimant was performing any supervisory or administrative type of job so as to exclude him from the definition of workman. In this regard it is appropriate to refer to the contents of his affidavit Ex.WW1/A which is in consonance with the statement of claim. While appearing as WW1, the claimant has admitted that his last pay drawn was Rs./13,000/- or above. He clarified that since his ID was found locked and his senior Mr. Manish Chaudhary had told him about this. He also clarified that he is not member of any union and his work was of administrative nature in the bank and that he was also taking part in the policy making meetings of the bank with other officials of the bank.

14. To my mind simply because the claimant was performing administrative nature of duties or was taking part in the policy making meetings of the bank with other officials of the bank, would not be legally sufficient to exclude him from the definition of the workman. It has been held in the case of ***Hussan Mithu Mhasvadkar Vs. Bombay Iron and Steel Iron Board (2001) 7 SCC 394*** that the designation of an official alone is not decisive regarding applicability of the definition of workman under the Act and one has to examine the nature and kind of his duty as well as power and functions of such official, so as to decide whether he is performing supervisory nature of work or whether he is mainly employed in managerial or administrative capacity or not. There is nothing in the evidence of the Management as to what was the supervisory nature of work/duty which the claimant was performing and in what kind of policy decision, the claimant has taken part. There is also nothing on record to show that the claimant had got any kind of disciplinary powers or any official was working under his control and supervision, so as to hold that he was exercising any supervisory authority over his subordinates. In this regard it is also appropriate to refer to the statement of MW 1 Ms. Penaaz Gupta, Manager (HR) of the Management Bank. There is nothing in the statement of this witness regarding supervisory nature of duty which the claimant was performing or what are/were the powers & functions which claimant was enjoying in managerial or administrative capacity.

15. I have carefully gone through the ratio of law in the case ***Tata Sons Ltd. Vs. S. Bandoyopadhyay 2004 (102) FLR 157 (Delhi)*** wherein it was held that Deputy Manager (Engineering) does not come within the definition of workman, as he was required to report to his superior though was performing work which also included creativity and imagination. There are also observations in the above ruling that mere designation of an employee is not of any consequence for the purposes of determining whether he is a workman or not. What is of importance is the nature of his duties, particularly his primary duties or his basic duties and the dominant purpose of his employment.

16. There is hardly any dispute with the above preposition of law but in the case in hand there is no evidence on record to suggest that claimant was performing any managerial function or administrative work in the course of his primary or basic duties. The Management was under obligation to lead cogent evidence in this respect so as to exclude the claimant from the definition of the workman .

17. Equally settled is the position under law. The Industrial Dispute Act being a social and beneficial legislation, its provisions should be construed liberally and harmoniously so as to advance the interests of the workman.

18. In view of the above discussion, it is held that the claimant herein falls within the definition of workman. This issue is decided accordingly.

19. Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to his alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that he was in the employment of the Management Bank and has completed more than 240 days in a calendar year.

20. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The claimant has been cross examined and in his cross examination also he has clearly stated that he was engaged on 06.11.2010. He has also clarified that no letter of appointment was issued to him, nor any interview was taken. He was also not issued any

identity card by the Management Bank. He has specifically stated that his signatures used to be taken on a voucher when salary was paid to him by the Bank. There are instances when his salary was paid in different names. He further clarified that his services were orally terminated by the Bank on 21.04.2013 and no written order was given to him. When he approached again, Management refused to allow him to join. He has specifically denied the suggestion that he has not worked for 240 days in a calendar year

21. The Management has examined Shri Ram Kumar Kharkali, Branch Manager of the Bank as MW1. He has clearly stated in his affidavit Ex.MW1/A that claimant was never in the employment of the Management Bank and casual labour is called as and when necessity arises from the pool of past casual employees by calling them on phone. The casual labour are paid either daily or weekly for the service which was rendered by them and not monthly basis and as such, there was no relationship of employer & employee between the Management and the claimant. He also deposed that there is no question of issuance of letter of termination as the claimant was not employee of the Management Bank.

22. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

23. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the Management in its written statement has clearly admitted the factum of employment of the casual labour on daily wage basis and more so, there is specific statement of the claimant that he was engaged by the Management Bank in the year 2010, though neither any letter of appointment was issued to her, nor any interview was taken. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act or in accordance with Standing Order applicable to the establishment concerned . Since in the case in hand, it stands clearly proved from the pleadings and evidence on record, especially the vouchers Ex.WW1/4 to Ex.WW1/61 (though in different names as stated by the claimant) it is apparent that the claimant was duly engaged by the Management Bank for doing intermittent nature of work and he was also paid wages for such period of work performed by her. As such, it clearly establishes relationship of employer-employee between the Management and claimant.

24. It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(s) of the Act.

25. As discussed above, in the case in hand engagement of the claimant as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management in its written statement and that the Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the claimant who appeared as WW1 cannot be brushed aside, more so for the reason that work of cleaning of the bank premises is of regular and perennial in nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant after his termination from the job.

26. Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and the claimant herein and that termination of the claimant was wrong and illegal. Both these issues are, therefore, decided accordingly in favour of the claimant and against the Management.

27. Now the vital question for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. Admittedly, the Management bank has not issued any notice to the claimant before ordering his termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law.

28. The contention of the Management that onus to prove that claimant has worked for 240 days or more in a calendar year was upon the claimant. Though on the face of it, it is quite attractive but on the basis of evidence on record particularly the admission made by the Management in its written statement regarding engagement of claimant for doing cleaning work and/or for performing intermittent nature of work, nullifies the very spirit of the contention and rather shifts the onus upon the Management to prove that claimant has not worked for 240 days in a calendar year. The Management was in possession of relevant documents such as abstract of attendance of daily wage workers, vouchers, salary slips etc. as the Management was paying wages to the claimant in cash but no such document was produced on record. Having failed to produce such like documents, same is really a crippling blow to the case of the Management. Resultantly, it is held that action of the Management in terminating the service of the claimant is totally illegal and wrong.

29. During the course of arguments, management relied on the judgement in the case of Secretary State of Karnataka vs. Uma Devi 2006 (4) SCC1, MP Housing Board Vs. ManojSrivastava 2006(III) AD(SC) 282, Ex. Engineer (State of Karnataka) Vs. SomSetty& Others (1997) 5 SCC 434, Himanshu Kumar Vidyarthi& others vs. State of Bihar (1997) 5 SCC 391, State of Himachal Pradesh Vs. Suresh Kumar Verma (AIR 1996 SC 1565), Ashwani Kumar Vs State of Bihar AIR 1996 SC 2833 and MadhyamikSikshaParishad Vs. Anil Kumar Mishra & others AIR 1994 SC 1638. I have gone through the ratio of the law, in the above judgements. Uma Devi case (supra) is not attracted to the case as engagement of the claimant is not illegal as he was engaged as daily wager by the bank. The case of MP Housing Board case (supra), it was case where the claimant was a daily and he was seeking pay scale of a permanent employee. However, in the case on hand, the claimant is seeking reinstatement. The case of Suresh Kumar Verma case (supra) is of no help to the case of the management as the claimant in the said case was overage and could not be considered for reinstatement. I have also gone through the case of MadhyamikSikshaParishad case (supra). In the said case, the claimants were engaged on adhoc posts for a specific purpose, i.e. issuance of certificates to be issued to the successful candidates for the examinations conducted by it. However, in the case on hand, the claimant was engaged as casual labour. Hence, none of the above judgements come to the rescue of the management.

30. Now the only question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. During the course of arguments, the claimant was present before this Tribunal and he has stated that he is not gainfully employed after his termination. There is pleading in the claim petition as well as evidence in this respect. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or adhoc work to make both ends meet, that would not itself amount to gainful employment. But at the same time this Tribunal cannot ignore the fact that there is no positive evidence on record to prove that the claimant was continuously serving the Management bank since after engagement. Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of HariNandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.

31. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.2 lakh (Rupees Two Lakh) appears to be just and reasonable and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. Award is passed accordingly.

Dated : January 24, 2019

A.C. DOGRA, Presiding Officer

नई दिल्ली, 5 फरवरी, 2019

का.आ. 228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ पटियाला प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 07/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.02.2019 प्राप्त हुआ था।

[सं. एल—12025/01/2019—आईआर (बी—1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 5th February, 2019

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2014) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 05.02.2019.

[No. L-12025/01/2019– IR(B-1)]

B.S. BISHT, Under Secy.

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No.7/2014

Shri Omveer S/o Shri Harpal,
R/o House No. 67, JatavMohalla,
Sabhapur Village, Near Government School,
PO Gokulpuri, Delhi 110 094

C/o B-94, BGS Block, Tis Hazari Court,
Delhi 110 054 …Workman

Versus

The General Manager/Chief Manager/Assistant General Manager,

State Bank of Patiala,

B-225, Naraina Industrial Area,

New Delhi …Management

AWARD

Present dispute has been raised by Shri Omveer (in short the workman) under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). A period of 45 days stood expired from the date of making his application before the Conciliation Officer. Sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Workman has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act. Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2-A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. It has been averred in the statement of claim that the claimant was working as Peon with Naraina branch of the management since 06.11.2010. The claimant never gave a chance of complaint to the management and worked to the entire satisfaction of the management. The claimant was denied of his legal dues, including appointment letter, identity card, regular pay scale etc. The management was annoyed with the claimant when he started demanding the above facilities. The claimant was made to work from 10 a.m. to 5.30 p.m. and was made to perform duties of peon, in addition to loading of cash in the ATM, preparing of note bundles, stitching of vouchers and various other jobs. When the claimant demanded for a rise in his wages, his services were done away with by Shri Rajesh Gupta, Manager on 21.04.2013 without giving any notice or pay in lieu thereof and retrenchment compensation. The management refused to take him back on duties. The claimant was also paid wages for 21 days in April 2013. Termination of his services is violative of provisions of Section 25-F, 25-G and 25-H of Industrial Disputes Act, 1947. He served notice of demand on 14.05.2013 seeking reinstatement of his services, but to no avail. He claims reinstatement in service of the bank with continuity and full back wages

3. Claim was demurred by the management by taking various preliminary objections, inter alia there existing no relationship of employer and employee between the parties, that the case does not fall within the ambit and scope of the powers of this Tribunal, that the appointments are regulated by statutory rules etc. It is averred that there was never a person with the name of ShriOmveer on their rolls, hence question of issuing appointment letter/ID Card/pay-scale etc. or assigning him duties for banking purpose does not arise. There is a centralized procedure for recruitment in the bank as well as termination of an employee. It is also averred that the bank engages casual labour as and when need arises, i.e. when the permanent sweeper/peon proceeds on leave for the smooth functioning of the branch; however, this does not amount to employment. The management has denied the other material averments contained in the statement of claim. Finally, it has been prayed that the claim may be dismissed.

4. Based on the pleadings of the parties, following issues were settled by my learned predecessor vide order dated 28.02.2014:

(i) Whether there exists relationship of employer and employee between the parties?

(ii) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of alleged termination of his services on 21.04.2013?

(iii) Whether the claimant is entitled to relief of reinstatement in service?

5. The claimant, in order to prove his case against the management examined himself as WW1 and tendered in evidence documents Ex.WW1/1 to Ex.WW1/63. Management, in order to rebut the case of the claimant, examined ShriManoj Kumar as MW1, who tendered in evidence documents Ex.MW1/1 to Ex.MW1/3.

6. I have heard Shri K.P. Rao, A/R for the claimant and ShriS.K.Tyagi, A/R for the management. My findings on the issues involved in the controversy are as follows:

Findings on issue No.(i), (ii) and (iii)

7. During the course of arguments, Learned A/R for the management strongly argued that the claimant herein does not fall within the definition of the workman. Learned AR of the Management took pains to the oral as well as documentary evidence on record so as to buttress his submissions.

8. Per contra AR appearing on behalf of the claimant refuted the contention of the Management.

9. After hearing the submissions of the parties counsel at length and careful scrutiny of the evidence on record, I am of the firm view that the claimant falls within the definition of "workman" as provided under Section 2(s) of the Act, for the reasons hereinafter mentioned. In order to find out whether the workman herein falls within the definition of workman as defined in section 2(s) of the Act. It would be expedient to have a glance on definition of the term 'workman', contained in section 2(s) of the Act. For sake of convenience, definition of term 'workman' is reproduced thus:

> "2(s) Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
>
> (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950(46 of 1950) or the Navy Act, 1957 (62 of 1957), or
>
> (ii) Who is employed in the police service or as an officer or other employee of a prison , or
>
> (iii) Who is, employed mainly in a managerial or administrative capacity, or
>
> (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

10. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of 'workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

11. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman', without

having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions.

12. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work or technical work or clerical work there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does not go out of the definition of 'workman' under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do even though he may incidentally doing other type of work.

13. Applying the legal principle as discussed above, this Tribunal is to examine whether claimant was performing any supervisory or administrative type of job so as to exclude him from the definition of workman. In this regard it is appropriate to refer to the contents of his affidavit Ex.WW1/A which is in consonance with the statement of claim. While appearing as WW1, the claimant has admitted that his last pay drawn was Rs./13,000/- or above. He clarified that since his ID was found locked and his senior Mr. Manish Chaudhary had told him about this. He also clarified that he is not member of any union and his work was of administrative nature in the bank and that he was also taking part in the policy making meetings of the bank with other officials of the bank.

14. To my mind simply because the claimant was performing administrative nature of duties or was taking part in the policy making meetings of the bank with other officials of the bank, would not be legally sufficient to exclude him from the definition of the workman. It has been held in the case of ***HussanMithuMhasvadkarVs.Bombay Iron and Steel Iron Board (2001) 7 SCC 394***that the designation of an official alone is not decisive regarding applicability of the definition of workman under the Act and one has to examine the nature and kind of his duty as well as power and functions of such official, so as to decide whether he is performing supervisory nature of work or whether he is mainly employed in managerial or administrative capacity or not. There is nothing in the evidence of the Management as to what was the supervisory nature of work/duty which the claimant was performing and in what kind of policy decision, the claimant has taken part. There is also nothing on record to show that the claimant had got any kind of disciplinary powers or any official was working under his control and supervision, so as to hold that he was exercising any supervisory authority over his subordinates. In this regard it is also appropriate to refer to the statement of MW 1 Ms. Penaaz Gupta, Manager (HR) of the Management Bank. There is nothing in the statement of this witness regarding supervisory nature of duty which the claimant was performing or what are/were the powers & functions which claimant was enjoying in managerial or administrative capacity.

15. I have carefully gone through the ratio of law in the case ***Tata Sons Ltd. Vs. S. Bandoyopadhyay 2004 (102) FLR 157 (Delhi)*** wherein it was held that Deputy Manager (Engineering) does not come within the definition of workman, as he was required to report to his superior though was performing work which also included creativity and imagination. . There are also observations in the above ruling that mere designation of an employee is not of any consequence for the purposes of determining whether he is a workman or not. What is of importance is the nature of his duties, particularly his primary duties or his basic duties and the dominant purpose of his employment. "

16. There is hardly any dispute with the above preposition of law but in the case in hand there is no evidence on record to suggest that claimant was performing any managerial function or administrative work in the course of his primary or basic duties. The Management was under obligation to lead cogent evidence in this respect so as to exclude the claimant from the definition of the workman .

17. Equally settled is the position under law. The Industrial Dispute Act being a social and beneficial legislation, its provisions should be construed liberally and harmoniously so as to advance the interests of the workman.

18. In view of the above discussion, it is held that the claimant herein falls within the definition of workman. This issue is decided accordingly.

19. Ld. AR appearing on behalf of the Management strongly contended that there is no relationship of employer and employee between the Management & claimant, nor the claimant has completed 240 days of service in a calendar year, preceding to his alleged termination. As such, provisions of Section 25-F of the Act are not applicable to the case in hand. It was also contended that onus is also upon the claimant to prove that he was in the employment of the Management Bank and has completed more than 240 days in a calendar year.

20. This Tribunal has to consider the oral as well as documentary evidence adduced on record so as to decide the question of relationship of employer and employee between the management and the claimant herein. In this respect, it is appropriate to refer to the affidavit ExWW1/A of the claimant. It is clear from the perusal of the affidavit Ex.WW1/A that it is in consonance with the pleadings i.e. statement of claim filed by the claimant. The claimant has been cross examined and in his cross examination also he has clearly stated that he was engaged on 06.11.2010. He has also clarified that no letter of appointment was issued to him, nor any interview was taken. He was also not issued any identity card by the Management Bank. He has specifically stated that his signatures used to be taken on a voucher when salary was paid to him by the Bank. There are instances when his salary was paid in different names. He further clarified that his services were orally terminated by the Bank on 21.04.2013 and no written order was given to him. When he approached again, Management refused to allow him to join. He has specifically denied the suggestion that he has not worked for 240 days in a calendar year

21. The Management has examined Shri Manoj KUmar, Branch Manager of the Bank as MW1. He has clearly stated in his affidavit Ex.MW1/A that claimant was never in the employment of the Management Bank and casual labour is called as an when necessity arises from the pool of past casual employees by calling them on phone. The casual labour are paid either daily or weekly for the service which was rendered by them and not monthly basis and as such, there was no relationship of employer & employee between the Management and the claimant. He also deposed that there is no question of issuance of letter of termination as the claimant was not employee of the Management Bank.

22. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management Bank. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

23. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the Management in its written statement has clearly admitted the factum of employment of the casual labour on daily wage basis and more so, there is specific statement of the claimant that he was engaged by the Management Bank in the year 2010, though neither any letter of appointment was issued to her, nor any interview was taken. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant was terminated in accordance with the provisions of the Act or in accordance with Standing Order applicable to the establishment concerned . Since in the case in hand, it stands clearly proved from the pleadings and evidence on record, especially the vouchers Ex.WW1/4 to Ex.WW1/61 (though in different names as stated by the claimant) it is apparent that the claimant was duly engaged by the Management Bank for doing intermittent nature of work and he was also paid wages for such period of work performed by her. As such, it clearly establishes relationship of employer-employee between the Management and claimant.

24. It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(s) of the Act.

25. As discussed above, in the case in hand engagement of the claimant as part time for doing intermittent nature of work and/or for cleaning the bank premises is duly admitted by the Management in its written statement and that the Management has not filed any document in the form of abstract of attendance of claimant or other such workers so as to show that claimant has not completed 240 days in a calendar year. In such circumstances, statement of the claimant who appeared as WW1 cannot be brushed aside, more so for the reason that work of cleaning of the bank premises is of regular and perennial in nature. The Management bank has not adduced any evidence to show as to who was/were the person/s engaged in place of claimant after his termination from the job.

26. Net result of the aforesaid discussion is that there is relationship of Employer-employee between the Management and the claimant herein and that termination of the claimant was wrong and illegal. Both these issues are, therefore, decided accordingly in favour of the claimant and against the Management.

27. Now the vital question for consideration is as to whether termination of the claimant is illegal and against the provisions of the Act. Admittedly, the Management bank has not issued any notice to the claimant before ordering his termination, nor has paid one month's salary in lieu of such notice as required under Section 25-F of the Act. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render whole action of the Management Bank to be illegal and wrong under the law.

28. The contention of the Management that onus to prove that claimant has worked for 240 days or more in a calendar year was upon the claimant. Though on the face of it, it is quite attractive but on the basis of evidence on record particularly the admission made by the Management in its written statement regarding engagement of claimant for doing cleaning work and/or for performing intermittent nature of work, nullifies the very spirit of the contention and rather shifts the onus upon the Management to prove that claimant has not worked for 240 days in a calendar year. The Management was in possession of relevant documents such as abstract of attendance of daily wage workers, vouchers, salary slips etc. as the Management was paying wages to the claimant in cash but no such document was produced on record. Having failed to produce such like documents, same is really a crippling blow to the case of the Management. Resultantly, it is held that action of the Management in terminating the service of the claimant is totally illegal and wrong.

29. During the course of arguments, management relied on the judgement in the case of Secretary State of Karnataka vs. Uma Devi 2006 (4) SCC1, MP Housing Board Vs. ManojSrivastava 2006(III) AD(SC) 282, Ex. Engineer (State of Karnataka) Vs. SomSetty& Others (1997) 5 SCC 434, Himanshu Kumar Vidyarthi& others vs. State of Bihar (1997) 5 SCC 391, State of Himachal Pradesh Vs. Suresh Kumar Verma (AIR 1996 SC 1565), Ashwani Kumar Vs State of Bihar AIR 1996 SC 2833 and MadhyamikSikshaParishad Vs. Anil Kumar Mishra & others AIR 1994 SC 1638. I have gone through the ratio of the law, in the above judgements. Uma Devi case (supra) is not attracted to the case as engagement of the claimant is not illegal as he was engaged as daily wager by the bank. The case of MP Housing Board

case (supra), it was case where the claimant was a daily and he was seeking pay scale of a permanent employee. However, in the case on hand, the claimant is seeking reinstatement. The case of Suresh Kumar Verma case (supra) is of no help to the case of the management as the claimant in the said case was overage and could not be considered for reinstatement. I have also gone through the case of MadhyamikSikshaParishad case (supra). In the said case, the claimants were engaged on adhoc posts for a specific purpose, i.e. issuance of certificates to be issued to the successful candidates for the examinations conducted by it. However, in the case on hand, the claimant was engaged as casual labour. Hence, none of the above judgements come to the rescue of the management.

30. Now the only question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. During the course of arguments, the claimant was present before this Tribunal and he has stated that he is not gainfully employed after his termination. There is pleading in the claim petition as well as evidence in this respect. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or adhoc work to make both ends meet, that would not itself amount to gainful employment. But at the same time this Tribunal cannot ignore the fact that there is no positive evidence on record to prove that the claimant was continuously serving the Management bank since after his engagement. Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of HariNandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

> "Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.''

31. Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.2 lakh (Rupees Two Lakh) appears to be just and reasonable and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within one month from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum from the date of filing the claim petition till realization of the amount. Award is passed accordingly.

Dated : January 24, 2019

A.C. DOGRA, Presiding Officer

Uploaded by Dte. of Printing at Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.